

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

HAZEL M. ROBY,)
as administratrix of)
the estate of Ronald)
Tyrone Roby, deceased,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO.
) 2:05cv494-MHT
BENTON EXPRESS, INC.,) (WO)
)
Defendant.)

ORDER

There are material issues of fact that are best addressed by a jury regarding whether Craig Stephens, an employee of defendant Benton Express, Inc., was acting within the line and scope of his employment when he collided with Ronald Tyrone Roby's car and killed him.

A reasonable jury could also conclude that, even if Stephens abandoned his route by tarrying in Atlanta for two days, he had returned to the line and scope of

his employment when this accident occurred. Stephens was driving from Atlanta to Pensacola carrying the load assigned to him by Benton Express at the time of this accident. See Bell v. Martin, 1 So.2d 906, 909 (Ala. 1941) (holding that when a driver leaves his route on personal business, he is outside the scope of his employment until he returns to the place of abandonment and commences what he was hired to do). The question of whether Stephens had returned to the line and scope of his employment at the time of the accident is more appropriately left to a jury. See Blackmon v. Starling, 130 So. 782 (Ala. 1930).

Accordingly, it is ORDERED that defendant Benton Express, Inc.'s motion for summary judgment (Doc. No. 34) is denied as to plaintiff Hazel Roby's claims premised on vicarious liability (Counts I & II of the complaint).

The court reserves judgment on defendant Benton Express, Inc.'s motion for summary judgment (Doc. No.

34) as to Count III of the complaint. The parties are DIRECTED to be prepared to discuss Count III at the pretrial conference scheduled for February 22, 2006.

DONE, this the 7th day of February, 2006.

s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE